

ORIGINAL

Before the
Federal Communications Commission
Washington, D.C. 20554

RECEIVED

AUG 26 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

CC Docket No. 96-150

DOCKET FILE COPY ORIGINAL

In the Matter of

Implementation of the
Telecommunications Act of 1996:

Accounting Safeguards Under the
Telecommunications Act of 1996

**Comments of the Newspaper
Association of America**

The Newspaper Association of America (NAA) hereby submits its comments in response to the Commission's Notice of Proposed Rulemaking (NPRM) in this proceeding.

I. Introduction and Summary (¶¶1-26)

The accounting safeguards in §274 of the 1996 Act are intended to prevent the BOCs from misallocating costs of certain ventures to their local exchange customers and discriminating against their competitors in the provision of new services. We agree with the Commission's tentative conclusion that its existing accounting safeguards—with minor modifications—would best meet these twin goals.

II. Safeguards For Separated Operations (¶¶62-119)

A. General (¶¶62-66)

The Commission tentatively concludes that its current affiliate transactions rules generally satisfy the statute's requirement of safeguards to protect against cross-subsidy.¹ The statutory provision of §274(B)(4) requires

¹ NPRM ¶64.

OH

separated affiliates and electronic publishing joint ventures to value assets that are transferred to or from the BOC in accordance with regulations prescribed by the Commission to prevent improper cross-subsidies. NAA agrees that the current affiliate transaction rules establish a satisfactory framework for detecting and preventing cross-subsidy. NAA also supports the Commission's efforts in the *Affiliate Transactions Notice*² and in this proceeding to improve these rules to provide more optimal protection.

B. Comparison of Section 274 and 272 (§105)

The Commission asks for comment on whether the distinctions between the separate affiliate required for interLATA services under §272 and the separated affiliate for electronic publishing under §274 require or permit different accounting treatment of affiliate transactions. While there are differences between §272 and §274, NAA believes that the accounting rules the Commission proposes for §272 transactions are also adequate for §274 purposes. Also, the Commission should apply the same affiliate transactions rules to transactions between a BOC and its electronic publishing joint venture as would apply to the separated affiliate. Although §274 applies differently to separated affiliates and electronic publishing joint ventures in some respects, these differences do not require any different accounting treatment.

² Amendment of Parts 32 and 64 of the Commission's Rules to Account for Transactions Between Carriers and Their Nonregulated Affiliates, *Notice of Proposed Rulemaking*, CC Docket No. 93-251, 8 FCC Rcd 8071, 8076, ¶9 (1993).

C. Audit Requirements (§§ 106-107)

The annual compliance reviews of §274(b)(8) should be conducted as the FCC proposes by requiring the independent entity to prepare and file with the Commission reports describing:

- the scope of its compliance review, with a description of how the affiliate's or joint venture's books and records were examined and the extent of the examination;
- the independent entity's conclusion whether examination of the books and records has revealed compliance or non-compliance with the affiliate transactions rules, any other non-discrimination requirements imposed by §274, and any other requirement of §274;
- any limitations imposed on the independent entity in the course of its review by the affiliate or joint venture or other circumstances that might affect the entity's opinion; and
- statements by the independent entity as to whether the carrier's accounting and affiliate transactions methodologies conform to the Communications Act of 1934, as amended, and the Commission's rules and whether the carrier has accurately applied the methodologies.

Section 274(b)(9) requires reasonable safeguards to protect proprietary information contained in compliance review reports. The policies being developed in the Commission's *Confidential Information* proceeding³ should be adequate to assure such protection.

D. Section 274(f)'s Reporting Requirement (§108)

Where the separated affiliate is required to file a Form 10-K with the Securities and Exchange Commission it should file the same form 10-K with the FCC to comply with §274(f). If a separated affiliate is not subject to an SEC filing requirement it should file with the FCC a report containing the same information that would be in Form 10-K if it were obliged to file, except such information as is not relevant to a corporation that is not publicly

³ GC Docket No. 96-55.

traded. Where information appears in the holding company's 10-K that is relevant to the separated affiliate, §274(f) would be satisfied by filing the holding company's 10-K with the Commission in addition to the specific information on the separated affiliate.

E. Section 274 Transactional Requirements (§§109-112)

Section 274(b)(1) is a self-effecting provision that requires separate books, records, and accounts. Section 274(b)(3)(B) is also a self-effecting provision requiring tariffs or written contracts. It is not necessary for the Commission to adopt any additional regulations for separated affiliates and joint ventures to implement these sections.

The Commission seeks comment on the meaning of the requirement in §274(b)(3) that transactions between a BOC and separated affiliate must be carried out in a manner "consistent with such independence."⁴ The term "in a manner consistent with such independence" under §274(b)(3) means in a manner that unrelated parties would carry out independent transactions and not based upon the affiliation, *i.e.*, on an arm's length basis.

The Commission's interpretation of "generally accepted auditing standards" is correct⁵ and does not require an amendment to the Commission's rules.

F. Scope of Commission's Authority (§§113-116)

There is no distinction in §274 based on whether electronic publishing services are interstate or intrastate, interLATA or intraLATA. Instead the requirements apply when the electronic publishing is disseminated by means of a BOC's "basic telephone service."⁶ Thus, the FCC's authority with respect

⁴ NPRM ¶110.

⁵ NPRM ¶111.

⁶ Act §§274(a), (i)(2).


to complaints and cease and desist orders applies to interstate and intrastate electronic publishing. However, Congress has manifested no intent to preclude the states from also enforcing this federal law.⁷ It is important to note that the Act does not give the Commission authority to regulate electronic publishing itself. Its authority is limited to specific filing, compliance, and enforcement activities when a BOC engages in electronic publishing over the BOC's basic telephone service through a separated affiliate or electronic publishing joint venture.

a) Miscellaneous (¶117)

NAA believes that compliance with the requirements for just and reasonable rates in §274(d) is important and agrees with the Commission's tentative conclusion⁸ to use its affiliate transaction rules to ensure compliance with this section.

Respectfully submitted,

DAVID S. J. BROWN



Senior Vice President/Public Policy and
General Counsel

Newspaper Association of America
529 14th Street, N.W., Suite 440
Washington, DC 20045-1402

August 26, 1996

⁷ The FCC's tentative conclusion is correct that the states should be allowed to continue to use their own cost allocation procedures for intrastate purposes. NPRM ¶116.

⁸ NPRM ¶117